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October 12, 2023

**VIA CM/ECF**

**MEMORANDUM ENDORSED**

Hon. Gregory H. Woods  
 United States District Court, Southern District of New York  
 500 Pearl Street, Room 1920, New York, NY 10007

**Re: *U.S. Bank National Association, et al. v. The Charitable Donor Advised Fund, L.P. and CLO HoldCo Ltd.* (Case No. 1:21-cv-11059-GHW)**

Dear Judge Woods,

Plaintiffs/Counter-Defendants U.S. Bank, National Association, in its capacity as trustee (the “Trustee”), Acis Capital Management, L.P. (“ACM”), and Joshua N. Terry (“Mr. Terry,” and, together with ACM and the Trustee, “Plaintiffs”), Defendants/Counter-Plaintiffs Charitable DAF Fund, LP a/k/a The Charitable Donor Advised Fund, L.P. (“DAF”), CLOH HoldCo, Ltd. (“CLOH”), and NexPoint Diversified Real Estate Trust (“NexPoint,” and, together with DAF and CLOH, “Defendants”), and Counter-Defendant Brigade Capital Management, LP (“Brigade,” and, collective with Plaintiffs and Defendants, the “Parties”) jointly submit this letter pursuant to Paragraph 1.E of the Court’s Individual Rules of Practice in Civil Cases to request a brief extension of expert discovery and summary judgment motion deadlines set out in the Court’s Case Management Plan and Scheduling Order (the “CMO,” Dkt. 76, as amended by Dkts. 159, 191, and 196). This is the fourth request for an extension. All Parties consent to the Request. Counter-Defendant Highland CLO Funding, Ltd. (“HCLOF”) is not a party to this letter and takes no position with respect to the extension of the deadlines as it is not participating in discovery per the Court’s August 4, 2023 Order (Dkt. 172).

The Parties have largely completed fact discovery but had to extend certain deposition deadlines due to scheduling challenges (Dkts. 191 and 196) and there are pending Motions to Compel filed by DAF and CLOH (Dkts. 205 and 206) (“Motions to Compel”). Further, the deposition of Mr. James Dondero has not been completed. Accordingly, the Parties have agreed that additional time is needed for expert discovery. The Parties therefore respectfully seek an extension of expert discovery deadlines by extending the deadline for party-proponents of a claim to offer initial expert disclosures from October 15, 2023 to November 3, 2023 (CMO, para 8(c)); extending the deadline for party-opponents of a claim to offer opposing/rebuttal expert disclosures from November 10, 2023 to December 13, 2023 (CMO, para 8(c)); and extending the close of expert discovery from December 10, 2023 to January 12, 2024 (CMO, para 8(b)). The Parties also seek a corresponding extension of the deadline to file motions for summary judgment from January 10, 2024 to February 13, 2024 (CMO, para 10).

The Parties and HCLOF respectfully reserve their rights to seek additional revisions. Further, CLOH and DAF respectfully specifically reserve their rights to seek additional revisions depending upon the resolution of their pending Motions to Compel and of HCLOF’s pending motion to dismiss (Dkt. 177).

In making this proposal, none of the Parties waive any of their respective substantive or procedural rights, all of which they respectively reserve.

The Parties thank the Court for its attention to this matter.

Respectfully Submitted,

/s/ Blair Adams

Jonathan E. Pickhardt  
Blair A. Adams  
Brendan Carroll  
Misha Boutilier  
Jeffrey Arnier  
QUINN EMANUEL URQUHART &  
SULLIVAN, LLP  
51 Madison Avenue, 22<sup>nd</sup> Floor  
New York, New York 10010  
(212) 849-7000

***Counsel for Plaintiffs ACIS Capital  
Management, L.P., and Joshua N. Terry***

/s/ Mark Kotwick

Mark D. Kotwick  
Thomas Ross Hooper  
Julie J. Hong  
SEWARD & KISSEL LLP  
One Battery Park Plaza  
New York, New York 10004  
(202) 574-1200

***Counsel for Plaintiff U.S. Bank National  
Association, as Trustee***

/s/ Jason C. Hegt

Jason C. Hegt  
Alexis Kellert Godfrey  
LATHAM & WATKINS LLP  
1271 Avenue of the Americas  
New York, NY 10020 (212) 906-1200  
Jason.Hegt@lw.com  
Alexis.Godfrey@lw.com  
***Counsel for Counter-Defendant Brigade  
Capital Management, LP***

/s/ Sawnie A. McEntire

Sawnie A. McEntire  
*Admitted Pro Hac Vice*  
Texas Bar No.: 13590100  
Fed ID #3476  
PARSONS MCENTIRE MCCLEARY PLLC  
1700 Pacific Avenue, Suite 4400  
Dallas, Texas 75201  
Telephone: (214) 237-4300  
Fax: (214) 237-4340  
E-mail: smcentire@pmmlaw.com

Roger L. McCleary  
*Admitted Pro Hac Vice*  
Texas Bar No.: 133937000  
Fed. ID #205  
PARSONS MCENTIRE MCCLEARY PLLC  
One Riverway, Suite 1800  
Houston, Texas 77056  
Telephone: (713) 960-7315  
Fax: (713) 960-7347  
E-mail: rmccleary@pmmlaw.com


Lindsey R. Skibell  
E-mail: rskibell@glennagre.com  
Jewel K. Tewiah  
E-mail: jtewiah@glennagre.com  
GLENN AGRE BERGMAN & FUENTES LLP  
55 Hudson Yards, 20th Floor  
New York, NY 10001  
Telephone: 212.358.5600  
***Counsel for CLO Holdco, Ltd. and The  
Charitable Donor Advised Fund, L.P.***

/s/ Kevin N. Colquitt  
Mazin A. Sbaiti  
Kevin N. Colquitt (*admitted pro hac vice*)  
Griffin S. Rubin (*admitted pro hac vice*)  
SBAITI & COMPANY, PLLC  
2200 Ross Ave., Suite 4900W  
Dallas, TX 75201  
(214) 432-2899  
***Counsel for NexPoint Diversified Real  
Estate Trust***

Application granted. The parties' discovery deadlines are hereby modified as follows: (1) the deadline for completion of expert discovery is extended to January 12, 2024; (2) the deadline for disclosures, under F.R.C.P. 26(a)(2), of party-proponents and party-opponents that intend to offer expert testimony on claims is extended to November 3, 2023 (party-proponents) and December 13, 2023 (party-opponents); and (3) the deadline for filing of any motions for summary judgment is extended to February 13, 2024. Additionally, the postdiscovery status conference previously scheduled for November 21, 2023 is hereby adjourned to February 2, 2024 at 4:00 p.m. The joint letter due in advance of that conference should be filed on ECF no later than January 26, 2024. The Clerk of Court is directed to terminate the motion pending at Dkt. No. 209.

SO ORDERED.

Dated: October 13, 2023  
New York, New York

  
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GREGORY H. WOODS  
United States District Judge